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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION  
96 OCT 24 PM 4:28  
DOCKET SECTION

International Air Transport  
Association:  
Agreement Relating to Liability  
Limitations of the Warsaw Convention

Docket OST-95-232 -50

Air Transport Association of America:  
Agreement Relating to Liability  
Limitations of the Warsaw Convention

Docket OST-96-1607 -19

COMMENTS OF THE  
INTERNATIONAL CHAMBER OF COMMERCE

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DATED: October 24, 1996

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DEPARTMENT OF TRANSPORTATION  
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COMMENTS OF THE  
INTERNATIONAL CHAMBER OF COMMERCE

**Introduction**

In its October 3 Order to Show Cause regarding the IATA and ATA "Agreements Relating to Liability Limitations of the Warsaw Convention," the Department sought comments on alternative measures for the protection of U.S. citizens in circumstances where the "fifth jurisdiction" might not be available and U.S. citizens therefore might not be able to bring suit in a U.S. court.

In this connection, the ICC wishes to reiterate that it is in the process of developing a customized arbitration mechanism for the expeditious determination of damages, at a location selected in a manner acceptable to the claimant. In order to ensure that a complete record is before the Department as it

considers whether effective alternatives are available to claimants who might not have access to the U.S. judicial system, this submission will describe the general background of the initiative and the main features of the mechanism. It is the ICC's conviction that its draft rules should be treated by the Department as the kind of alternative that supports approval and immunization of the intercarrier agreements.

#### **1. The International Chamber of Commerce**

The ICC is the world business organization. It is the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. The ICC's purpose is to promote international trade, investment and the market economy system. It has National Committees in 62 countries, and is represented through direct members in another 70.

The ICC has Commissions on Banking, Insurance, Taxation, International Arbitration, Environment, Commercial Practice, Trade and Investment, Intellectual Property, Competition and Transport.

As the world's business organization, the ICC has a major interest in developments in the aviation market. Its chief interest in this respect is the further development of competitive, efficient global services for passengers and goods. The ICC brings together in its Commission on Air Transport

representatives from carriers, passengers and all other interests in air transport.

IATA is one of the specialized worldwide air transport organizations with which the ICC maintains a long-standing relationship. Other such observer organizations in the aviation sector are the International Airline Passengers Association, Airports Council International, Consumers International, International Federation of Air Line Pilots' Associations, International Business Travel Association, and the World Travel and Tourism Council.

The ICC also provides a variety of essential services, foremost among them the ICC International Court of Arbitration, the world's leading institution of its kind. The universal scope of the ICC Court is evidenced by the fact that each year numerous parties, arbitrators and lawyers from countries of every economic, political and social system are present in ICC arbitrations. In 1995, requests for arbitration involved parties from 92 countries.

2. **Background and main features of the draft ICC international arbitration rules for airline passenger liability claims**

The ICC membership and its active observer organizations unanimously endorsed the proposal that the ICC develop arbitration rules to supplement the intercarrier agreements in question. The Draft International Arbitration Rules for Airline

Passenger Liability Claims, attached hereto as an Appendix, were developed by an international working group, set up jointly by the ICC and IATA, of well-known arbitrators representing both civil and common law jurisdictions, and insurance and aviation experts. Throughout the drafting process, the group's sole objective was the creation of a mechanism that is user-friendly, universally applicable, and capable of arriving quickly at a fair and enforceable decision.

The Department has stressed in its Order the need for application of the agreements on a system-wide basis. The ICC submits that its proposed tailor-made arbitration solution is a valuable supplement to the agreements filed for exactly that reason -- the ICC has more than 70 years experience with international arbitration. Any alternative measures for protecting U.S. citizens in circumstances where the fifth jurisdiction might otherwise not be applied must be international in scope and not tied to any specific national or commercial interest. The ICC Draft Rules satisfy these requirements.

The Draft Rules are expressly intended to provide a customized arbitration solution for disputes over the quantum of damages between passengers (or their heirs) as claimants, and carriers (and possibly insurers) as defendants, arising out of operations in connection with international air transportation, as defined in the Warsaw Convention.

The following main features best describe the proposed arbitration mechanism:

- Arbitrations are initiated on the basis of a standard arbitration agreement signed by the parties after an accident has occurred and after the air carrier has recognized its liability. (The form of agreement is based on forms used in consumer arbitration schemes.)
- The arbitration system is administered by the ICC under the supervision of a Standing Committee whose members are appointed by IATA and the ICC.
- All arbitrators are selected from a list qualified experts, it being intended that the list must have the widest possible geographical and cultural representation.
- Parties may agree on the number and identity of arbitrators (from among those on the list), the place and language of the arbitration, and on the applicable law.
- The arbitrator(s) may order one or more provisional payments to cover urgent financial needs of a passenger or his next-of-kin.
- An award should usually be rendered within eight months of the request for arbitration.
- IATA has indicated that the air carrier will normally accept to pay the full amount of the advance on costs; this remains to be finalized. The arbitral tribunal shall decide on how the final costs shall be borne. Each party shall bear its own legal costs.
- The award must be executed at the latest thirty days after it is rendered.

The ICC believes that the procedures outlined above, as more specifically spelled out in the draft rules appended hereto, provide more than adequate safeguards for those claimants who choose to use it. The draft rules offer flexibility, neutrality, expertise, fairness, and efficiency. They provide, in other words, a sound basis upon which to approve the intercarrier

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agreements despite the unavailability of the "fifth jurisdiction."

Respectfully submitted,



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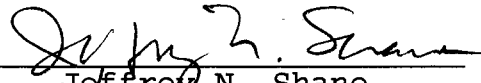
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**DATED: October 24, 1996**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of October, 1996, I caused copies of the foregoing "Consolidated Comments of the International Chamber of Commerce" to be delivered via first-class mail, postage prepaid, to each party on the attached Service List.

  
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## **The Draft International Arbitration Rules For Airline Passenger Liability Claims**

### **Introductory Note**

#### **I - Background**

##### **A - The Inter-carrier Agreement on Passenger Liability of 31 October 1995**

The ICC, through its Commission on Air Transport, over the years has consistently supported attempts to modernise the liability system in air transport as established under the 1929 *Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air*. Under Art. 17 of this Convention, the carrier is presumed liable for damages sustained by a passenger. Liability, however, is limited to approximately US\$ 10,000, unless the passenger and carrier agree to a higher limit. If the carrier proves that it took all necessary measures to avoid damages, it will not be held liable. The only way in which a victim or next-of-kin may obtain compensation in excess of the limits of the Warsaw Convention is to prove the air carrier's wilful misconduct. This in turn has led to costly and lengthy litigation for passengers and airlines alike.

Outside the Warsaw framework, various attempts have been made to increase the limits, either through national legislation or through voluntary inter-carrier agreements, such as the 1966 Montreal agreement which raised the limit for passengers in case of death or injury to US\$ 75,000.

Nevertheless, the liability limits are capped at levels which, while varying according to country, are typically well below what most passengers would be entitled to by normal standards of accident compensation. The ICC continued to conduct its discussions on the Warsaw system in close consultation with the organisation representing most of the world's airlines, the International Air Transport Association (IATA). In 1995, IATA, consciously aware of the negative consequences of inadequate liability limits to passenger and carriers, was granted temporary anti-trust immunity in the EU and US to conduct discussions with its membership on improvements to the liability system.

At the 18 October 1995 meeting of the Commission on Air Transport, IATA's General Counsel and Corporate Secretary, Mr. Lorne Clark, made a presentation on discussions in IATA about the introduction of a voluntary inter-carrier agreement (IIA) which would eliminate the limits on the airlines' liability currently in force. Proposing a no-limit situation, the IIA would effectively remove the need for years of costly litigation to establish "wilful misconduct", the only way in which claimants can, under the Warsaw regime, recover damages exceeding the Warsaw liability caps. As of 19 August 1996, some 60 carriers had signed the IIA, including most major airlines. Some 28 airlines had also signed the Agreement on Measures to Implement the IATA Inter-carrier Agreement. The IIA, after having attracted a significant number of signatures from member airlines, was recently filed with EU and US authorities for review and, if it satisfies their wishes for an improved airline liability system, for continued anti-trust immunity.

##### **B - IATA's request for a customized arbitration system**

In conjunction with the elimination of the Warsaw liability caps, IATA has suggested that the IIA be supplemented with a special arbitration mechanism to be offered to claimants as an efficient means of

resolving differences over the amount of damages to be paid by the air carrier. The ICC Secretary General subsequently met with IATA representatives to discuss further the possibility of developing rules for such a customized arbitration mechanism. At this meeting, both sides agreed that a small, informal group of IATA and ICC experts should be asked to provide a first draft set of arbitration rules for this purpose. This group (see the attached list of participants) met four times in 1996, and agreed on 4 July 1996 on draft *International Arbitration Rules for Airline Passenger Liability Claims*.

As approval of the IIA and immunity are expected to be granted in the near future, IATA and the ICC are now submitting the attached draft Rules to their respective relevant bodies for review and approval.

## **II - Overview of the Draft International Arbitration Rules for Airline Passenger Liability Claims**

### **A - In General**

This is a tailor-made dispute resolution system for disputes over the quantum of damages involving on the one hand passengers (or their heirs) as claimants, and on the other hand air carriers and possibly insurers as defendants, in the context of an international air transport accident under the Warsaw Convention.

It is intended to be user friendly, to take full account of the need to ensure consumer protection, and to arrive quickly at a fair and enforceable decision.

Although some provisions of the ICC Rules of Arbitration have been incorporated in these Rules, such characteristic features of the ICC Arbitration Rules as the terms of reference and the scrutiny of awards have not been included. As will be seen, several original elements have been inserted in these Rules, thus creating a customized dispute resolution service, to be administered under the auspices of an independent standing committee, as under the ICC-CMI Rules of International Maritime Arbitration and the ICC Rules of International Expertise.

### **B - Main features**

- Arbitrations are initiated on the basis of a standard arbitration agreement signed by the parties *after* an accident has occurred. Passengers (or their heirs) shall always be Claimants. Air carriers shall always be Defendants. (The form of agreement is inspired by forms used for consumer arbitration schemes.)
- The arbitration system is administered by the ICC under the supervision of a Standing Committee whose members are appointed by IATA and the ICC.
- All arbitrators are selected from a list of arbitrators to be established, it being intended that the list have the widest possible geographical and cultural representation.
- Parties may agree on the number and identity of arbitrators (from among those on the list), the place and language of the arbitration, and on the applicable law.
- The arbitrator may order one or more provisional payments to cover urgent financial needs of a passenger or next-of-kin.
- An award should usually be rendered within eight months of the request for arbitration.

- IATA has indicated that the air carrier will normally accept to pay the full amount of the advance on costs. The arbitrators shall decide on how the final costs shall be borne. Each party shall bear its own legal costs.
- The award must be executed at the latest thirty days after it is rendered.

## C - Summary Description of Certain Provisions

### Scope (Article 1)

Article 1 sets out the general scope of application of the Rules: disputes over the quantum of damages in the context of a passenger accident in an international air transportation within the meaning of the Warsaw Convention. Article 1 thus excludes disputes concerning the carriage of goods. Article 1 does not explicitly exclude disputes over liability, although it is understood that this question will usually have been resolved before an arbitration agreement is signed.

### Standing Committee (Article 2)

In drafting provisions concerning the composition of the Standing Committee, the Working Party was largely inspired by Article 2 of the ICC-CMI Rules of International Maritime Arbitration. As in the case of the Maritime Arbitration Rules, the Standing Committee on Passenger Liability Claims is independent of the ICC International Court of Arbitration.

The Standing Committee is composed of twelve members appointed in equal numbers by the ICC and IATA. The Chairman of the Standing Committee is selected jointly by these two organisations.

The Standing Committee has as its functions: to decide on the admissibility of a request where the parties have used a form other than the Standard Arbitration Agreement (Art. 4); to approve the list of arbitrators (Art. 9); to decide, failing an agreement of the parties, on the number of arbitrators (Art. 8); to appoint arbitrators in certain circumstances (Arts. 10 and 11); to take various decisions concerning the independence, challenge and replacement of arbitrators (Arts. 12, 13 and 14); to consolidate related cases where feasible (Art. 15); to determine the amount of the advance on costs and of the final costs (Arts. 30 and 31).

For purposes of expediency, the Standing Committee may take decisions through consultations by phone, fax or other means (Art. 2.4).

The Rules do not prevent Members of the Standing Committee from appearing on the list of arbitrators, with the possible exception of the Chairman and Vice-Chairmen, provided that the Standing Committee shall not appoint its own members as arbitrators.

The Secretariat is to be provided by the ICC.

### Standard Arbitration Agreement (Article 4)

In contrast with most commercial arbitrations, Airline Passenger Liability Claims arbitrations under these Rules may arise only on the basis of an agreement of the parties signed after an accident has occurred. There are practical and legal reasons for this.

From the practical side, when an accident occurs, the parties will systematically endeavour to try to resolve liability claims amicably. This first step includes, for air carriers and their insurers, identifying

the passenger's next-of-kin (in case of passenger death), making provisional payments and offering a global settlement agreement. It is only once an offer has been rejected that an arbitration is likely to be envisaged. From a legal standpoint, the Warsaw Convention (Art. 32) states that: *"Any clause in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void."* Furthermore, national courts may be wary of arbitration agreements involving a consumer unless they have been made subsequent to a dispute arising and have been individually negotiated (see for ex. Art. 3.1 of EEC Council Directive n° 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts). In any case, it is unlikely that any such agreement could be negotiated prior to an air flight.

The Standard Arbitration Agreement form contains obligatory and optional elements. The obligatory elements comprise the name and signature of the parties, an outline of the dispute and relief sought and an agreement to submit such dispute to arbitration under the International Arbitration Rules for Airline Passenger Liability Claims. The optional elements include agreement on the number and identity of the arbitrators, seat and language(s) of the arbitration, applicable law and advance on costs.

It is expected that the airline will agree to pay the advance on costs.

#### Arbitral Tribunal (Arts. 8 - 14)

All arbitrators are selected from a pre-established list. The purpose of this list is to maintain a high standard of expertise within the panels. It is expected that the list procedure will speed up the arbitration process in the context of passenger claims and will facilitate the consolidation of proceedings.

The list will have to be as representative as it can be of the cultures and nationalities involved. All arbitrators shall be selected from among the list which is to be maintained by the Secretariat and approved by the Standing Committee. However, the Standing Committee is allowed exceptionally to appoint arbitrators who are not on the list. Examples of exceptional circumstances would include those requiring specific regional, technical or linguistic expertise. The Standing Committee may have to address the need to prevent "arbitrator shopping" (the selection by either the passengers or carriers of arbitrators who, although impartial and independent may be seen to be more favorable to one side) and "over-appointments" of the same arbitrator.

#### Consolidation (Art 15)

The Rules provide that the Standing Committee, at its discretion, will have the power to consolidate related cases. For example, it may be desirable for reasons of speed, economy and consistency of decisions to consolidate several cases arising from a same airline accident and involving parties from the same country.

#### Seat of arbitration (Art. 16)

The Warsaw Convention restricts the plaintiff's option in bringing an action for damages to four venues (Art 28: *"... either before the court of the domicile of the carrier or his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination"*). Arbitration, instead of litigation, is intended to break the deadlock in the discussions over an amendment to the Warsaw Convention which would introduce a fifth jurisdiction (*i.e.*, the passenger's domicile).

### Provisional measures (Art. 19)

The power for an arbitrator to order provisional payments in favor of a passenger or a next-of-kin is a feature of these Rules which has been included at the request of IATA.

### Hearings (Art. 20)

In its discussions, the Working Party considered the possibility of providing for proceedings based only on documents. However, it was recognized that oral hearings will be expected by most victims of accidents or their next-of-kin. IATA emphasized the importance of oral hearings.

### Law applicable to the merits (Art. 21)

The Inter-carrier agreement states that (Art. 1) "*...the carriers agree to take action to waive the limitation of liability (...) so that recoverable compensatory damages may be determined and awarded by reference to the law of the domicile of the passenger*". The implementing agreement mentions the determination of damages by reference to the law of the domicile or permanent residence of the passenger only as an option.

As this important question remains unresolved, it was deemed advisable to leave the decision on the applicable law to the arbitrators, unless otherwise agreed by the parties.

### Award (Arts. 22 to 29)

An award is to be rendered within six months from the date when the arbitrator is notified that the advance on costs has been paid in full.

The unusual provision of Art. 28 is included in the Rules at the request of IATA. According to this provision, the parties undertake to carry out all awards within 30 days. This, in fact, constitutes an undertaking by the airlines to immediately pay passengers or their next-of-kin any amount they would be awarded in the arbitration.

Sanitized extracts of arbitration awards would be published on a regular basis.

### Costs (Arts 30-31)

The advance on costs and the final costs are fixed by the Standing Committee. The arbitrator's fees will be calculated taking into consideration the time spent, the rapidity of the proceedings and the complexity of the case. The administrative fees will be determined in accordance with a schedule of fees.

The Standard Arbitration Agreement contains, among its optional elements, a paragraph specifying who shall pay the advance on costs. It is understood that air carriers would agree in most circumstances to cover the advance on costs. However, in order to prevent fanciful claims, Art 32.4 of the Rules provides that the arbitrator shall decide which of the parties shall bear the costs of the arbitration or in what proportions the costs shall be borne by the parties. For example, if a passenger who has rejected an offer from the carrier prior to the arbitration is awarded by the arbitrator less than what he was offered by the air carrier, it is reasonable to assume that the passenger should bear part of the costs. In any case, each party shall bear its own legal costs.



### III - Further questions

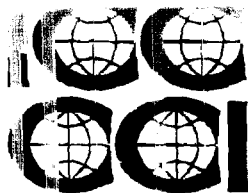
The Working Party is aware that the implementation of International Arbitration Rules for Airline Passenger Liability Claims will raise several issues which are not typically addressed in the course of international commercial arbitrations.

Among these are: the public policy issue (the extent to which it is possible to derogate from Warsaw Convention provisions); the arbitrability of passenger liability claims; the legal capacity of certain parties to enter into an arbitration agreement (*i.e.*, a sixteen year old victim of an accident).

As these issues are to be resolved according to national law, it would be appreciated if the members of the Commission on International Arbitration in particular could comment on how such issues might be dealt with in their countries.

Furthermore, the Working Party has noted that approximately a third of the signatories to the New York Convention have restricted application of the Convention to commercial matters.

Notwithstanding the relevance of the above questions, the Working Party decided to pursue the drafting of the arbitration rules so that they may be used whenever there is no legal obstacle to the same. It is also assumed that parties wishing to take advantage of the Rules will generally abide by the arbitrators' award voluntarily.



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**Annex to the Introductory Note**

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**INTERNATIONAL ARBITRATION RULES  
FOR AIRLINE PASSENGER LIABILITY CLAIMS  
(DRAFT/ 17 July 1996)**

**INTRODUCTION**

**Article 1 - Scope**

These Rules are intended to be used for the conduct of arbitrations relating to damages sought in case of death or personal injury of a passenger, arising out of operations in connection with international air transportation within the meaning of the *Convention for the Unification of Certain Rules Relating to International Transportation by Air*, signed at Warsaw on October 12, 1929 (Warsaw Convention), as amended. These Rules are more specifically but not exclusively intended for the resolution of disputes concerning the quantum of damages.

**GENERAL RULES**

**Article 2 - Standing Committee**

1. An institutional body known as the "Standing Committee on Passenger Liability Claims" (hereinafter the "Standing Committee") will have the duty of ensuring the application of these Rules.
2. The Standing Committee shall be composed of twelve members: six to be appointed by the International Chamber of Commerce (ICC) and six by the International Air Transport Association (IATA). The members of the Standing Committee shall be appointed for a 3-year renewable term.
3. The Chairman and two Vice-Chairmen of the Standing Committee, selected from among its members, shall be appointed jointly by the ICC and IATA.
4. The decisions of the Standing Committee shall be taken by a simple majority. If no majority is attained, the Chairman, or in the Chairman's absence, a Vice-Chairman, shall have a casting vote. The decisions of the Standing Committee shall be valid when at least five members, including the Chairman, or in the Chairman's absence, a Vice-Chairman, have participated in the deliberations, either in person or by any appropriate means of telecommunication.
5. All decisions of the Standing Committee are of an administrative nature. The Standing Committee shall not be required to give reasons for its decisions.
6. The Chairman, or in the Chairman's absence, a Vice-Chairman, shall have the power to take urgent decisions on behalf of the Standing

Committee, provided that any such decision shall be reported to the Standing Committee within a reasonable time.

7. The Secretariat of the Standing Committee (hereinafter the Secretariat) shall be provided by the ICC.

### **Article 3 - Notifications, communications and calculation of periods of time**

1. All notifications or communications shall be validly made if they are delivered against receipt or forwarded by registered post or special courier to the address or last known address of the addressee. Facsimile transmission, telex, telegram or electronic mail may be used to make such notification or communication, provided they are confirmed by mail.

2. A notification or communication shall be deemed to have been effected on the day when it was received, or should have been received by the addressee or by its representative.

3. Periods of time specified in the present Rules shall start to run on the day following the date a notification or communication is deemed to have been effected in accordance with the preceding paragraph. When, in the country where the notification or communication is deemed to have been effected, the day following such a date is an official holiday or a non-business day, the period of time shall commence on the first working day. Official holidays and non-working days shall be included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been effected, the period of time shall expire at the end of the first working day.

## **COMMENCING THE ARBITRATION**

### **Article 4 - Standard arbitration agreement**

1. Parties wishing to have recourse to arbitration under these Rules shall complete and sign the Standard Arbitration Agreement (Appendix 1 to these Rules), agreeing thereby that disputes between or among them shall be referred to arbitration under these Rules. If the parties have used a form other than the Standard Arbitration Agreement, the Standing Committee, without prejudice to paragraph 2 below, shall decide as to the admissibility of recourse to arbitration under these Rules. In these Rules, the term «arbitration agreement» refers either to the Standard Arbitration Agreement or to any other form of agreement that the Standing Committee deems admissible.

2. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement.

#### **Article 5 - Request for arbitration**

1. Any party to the arbitration agreement may initiate the arbitration proceedings by submitting a Request for arbitration to the Secretariat. The date when the Request is received by the Secretariat shall be deemed to be the date of commencement of the arbitral proceedings.
2. The Request shall contain the following:
  - a) full names, description and addresses of the parties;
  - b) the arbitration agreement;
  - c) insofar as not sufficiently detailed in the arbitration agreement:
    - a description of the nature and circumstances of the dispute;
    - a statement of the relief sought and an indication of any amount claimed;
    - any comment as to the seat of arbitration, the applicable law, the language(s) of the arbitration and the number of arbitrators;
    - where applicable, the name and address of an arbitrator selected from the list of arbitrators.
3. The Secretariat shall send a copy of the Request and the documents annexed thereto to the other party or parties.

#### **Article 6 - Answer to the Request**

1. Within thirty (30) days of the receipt of the Request from the Secretariat, the other party or parties shall submit an Answer to the Secretariat.
2. The Answer shall contain *inter alia* the following:
  - a) full names, description and addresses of the parties;
  - b) insofar as not sufficiently detailed in the arbitration agreement:
    - comments on the nature and circumstances of the dispute;
    - comments on the relief sought and amounts claimed;
    - any comment as to the seat of arbitration, the applicable law, the language(s) of the arbitration and the number of arbitrators;
    - where applicable, the name and address of an arbitrator, selected from the list of arbitrators.
3. A copy of the Answer and of the documents annexed thereto, if any, shall be communicated by the Secretariat to the party or parties that initiated the arbitration.

#### **Article 7 - Written statements and documents**

All written statements, pleadings as well as all documents submitted by the parties during the course of the proceedings shall be supplied in a number of copies sufficient to provide one copy for each other party, plus one for each arbitrator and one for the Secretariat.

## **CONSTITUTING THE ARBITRAL TRIBUNAL**

### **Article 8 - Number of arbitrators**

1. Any dispute submitted to arbitration under these Rules may be settled by a sole arbitrator or by three arbitrators. In these Rules, the terms « arbitrator » and « arbitral tribunal » denote a single arbitrator or three arbitrators, as the case may be.
2. Failing an agreement by the parties on the number of arbitrators, the Standing Committee may appoint one or three arbitrators, as it considers appropriate in view of the circumstances of the case.

### **Article 9 - List of arbitrators**

All arbitrators shall be selected from a list of arbitrators maintained by the Secretariat and approved by the Standing Committee. In exceptional circumstances, arbitrators who are not on the list may be appointed by the Standing Committee.

### **Article 10 - Appointment of a sole arbitrator**

Where the dispute is to be referred to a sole arbitrator, the parties may agree upon the identification of such person. If the parties fail to agree within thirty (30) days from the date when the Request for arbitration has been received from the Secretariat by the other party, the sole arbitrator shall be appointed by the Standing Committee.

### **Article 11 - Appointment of three arbitrators**

1. Where the dispute is to be referred to three arbitrators, each party shall appoint one arbitrator and the third, who will act as Chairman of the arbitral tribunal, shall be appointed by the Standing Committee, unless the parties or the co-arbitrators agree on the identification of such person within thirty (30) days of the appointment of the second co-arbitrator.
2. The Requesting party shall appoint an arbitrator in the Request for arbitration at the latest, or where the parties agree to refer the dispute to three arbitrators subsequent to the Request, within thirty (30) days of such agreement, failing which the arbitrator shall be appointed by the Standing Committee.
3. The other party shall appoint an arbitrator in the Answer, or at the latest within thirty (30) days of the notification of the appointment of the arbitrator appointed by the Requesting party. Failing this, the arbitrator shall be appointed by the Standing Committee.
4. Where there are multiple Claimants or Respondents they shall respectively be considered as a single party for the purpose of the above

provisions, provided, however, that the Standing Committee shall appoint all three of the arbitrators in the event that either the Claimants or the Respondents are unable to agree on the appointment of an arbitrator.

#### **Article 12 - Independence of arbitrators**

1. Every arbitrator appointed according to these Rules must be and remain independent of the parties involved in the arbitration.
2. A prospective arbitrator shall not accept to serve as an arbitrator if there are any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence, unless such facts or circumstances have been disclosed in writing to the Secretariat and the parties, and no party objects within 15 days of receipt of such disclosures. If a party objects to the appointment of a prospective arbitrator, the Standing Committee shall either approve the appointment, or decide that another arbitrator shall be appointed.
3. An arbitrator shall immediately disclose in writing to the Secretariat any facts or circumstances of a similar nature that may arise between the arbitrator's appointment and the final award.

### **CHALLENGE AND REPLACEMENT OF ARBITRATORS**

#### **Article 13 - Challenge of arbitrators**

1. An arbitrator may be challenged, subsequent to appointment, whether for a lack of independence or otherwise, by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based. A party may challenge an arbitrator only for reasons of which such party becomes aware after receipt of the notification of the arbitrator's appointment.
2. For a challenge to be admissible, it must be submitted to the Secretariat within 15 days from receipt of the notification of the appointment of the arbitrator, or within 15 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based, if such a date is subsequent to the receipt of the aforementioned notification.
3. The Standing Committee shall decide on the admissibility, and at the same time if need be on the merits, of a challenge, after the Secretariat has accorded an opportunity for the arbitrator concerned, the parties and any other member of the arbitral tribunal to comment in writing within a period of time to be fixed by the Secretariat. The Standing Committee's decision shall be final, and the reasons for its decision shall not be communicated.

#### **Article 14 - Replacement of arbitrators**

1. An arbitrator shall be replaced in the event of death or disability, the acceptance by the Standing Committee of a challenge, the acceptance by the Standing Committee of the arbitrator's resignation, or an agreement of all the parties that the said arbitrator be replaced.
2. An arbitrator shall also be replaced when the Standing Committee decides that such person is prevented *de jure* or *de facto* from fulfilling the functions of an arbitrator, or is not fulfilling such functions in accordance with the Rules. In any such case, the Secretariat shall give the arbitrator concerned, the parties and other members of the arbitral tribunal, an opportunity to comment before the Standing Committee makes its decision. The Standing Committee's decision shall be final, and the reasons therefor shall not be communicated.
3. Whenever an arbitrator is to be replaced, the Standing Committee shall appoint the replacement arbitrator. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior hearings shall again take place.

### **CONSOLIDATION**

#### **Article 15**

1. Where several Requests for arbitration are submitted to the Secretariat in connection with the same event or accident, the Standing Committee may decide, at its discretion, and having due regard to the parties' views, to consolidate some or all of the arbitrations concerned in one or more proceedings before a sole arbitrator or an arbitral tribunal of three arbitrators, appointed by the Standing Committee.
2. Consolidation may also be ordered, at the Standing Committee's discretion, and having due regard to the parties' views, after arbitral tribunals have already been constituted in the cases concerned. Where appropriate, the Standing Committee shall determine the remuneration for the work already carried out by the arbitrators whose mandates are terminated by reason of the consolidation.

### **ARBITRAL PROCEEDINGS**

#### **Article 16 - Seat of arbitration**

1. The seat of arbitration shall be fixed by the Standing Committee, unless otherwise agreed by the parties.



2. The arbitral tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it considers appropriate.

#### **Article 17 - Language of the proceedings**

Failing an agreement of the parties, the arbitrator shall determine the language or languages of the arbitration, due regard being paid to all relevant circumstances.

#### **Article 18 - Rules governing the proceedings**

1. The rules governing the proceedings before the arbitrator shall be those resulting from these Rules and, where these Rules are silent, any rules which the parties, or failing them, the arbitrator, may determine.

2. Subject to the above paragraph, the arbitration shall be conducted in such manner as the arbitrator considers appropriate.

#### **Article 19 - Provisional measures**

1. The arbitrator may, at the request of a party, order any interim, conservatory or provisional measure the arbitrator deems appropriate in the circumstances of the dispute and may require security for the costs of such measure from the requesting party. In particular, the arbitrator may order one or more provisional payments in respect of urgent financial needs of a party. The measures ordered pursuant to this paragraph may, if appropriate, take the form of an interim award.

2. An application by a party to any competent judicial authority for interim or conservatory measures shall not be held to infringe the agreement to arbitrate or to affect the relevant powers reserved to the arbitrators. The party having made such application shall notify the same and any such measure taken by the judicial authority, without delay to the Secretariat of the Standing Committee. The Secretariat shall inform the arbitrator thereof.

#### **Article 20 - Hearings**

1. The arbitrator shall proceed within as short a time as possible to establish the relevant facts of the case. The arbitrator may fix time-limits.

2. After study of the written submissions of the parties and of all documents relied upon, the arbitrator shall hear the parties if one of the parties so requests, or failing such request, on the arbitrator's own initiative. In addition, the arbitrator may decide to hear any other person in the presence of the parties or in their absence provided they have been duly summoned.

3. The arbitrator may appoint one or more experts, define their terms of reference, receive their reports and/or hear them in person in the presence of the parties or in their absence provided they have been duly summoned.

4. At the request of one of the parties, or if necessary, on the arbitrator's own initiative, the arbitrator, giving reasonable notice, shall summon the parties to appear at a hearing and shall so inform the Secretariat.

5. If one of the parties, although duly summoned, fails to appear, the arbitrator, if satisfied that the summons was duly received and the party is absent without valid excuse, shall have power to proceed with the arbitration. Such proceedings shall then be deemed to have been conducted in the presence of all parties.

6. The arbitrator shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitrator and of the parties, persons not involved in the proceedings shall not be admitted.

7. The parties may appear in person or through duly appointed representatives. In addition, they may be assisted by advisers.

#### **Article 21 - Law applicable to the merits**

The parties shall be free to determine the law to be applied by the arbitrator to the substance of the dispute. In the absence of any such determination, the arbitrator shall determine the law to be applied.

### **THE AWARD**

#### **Article 22 - Time-limit for the award**

The time-limit within which the arbitrator must render an award is fixed at six months from the date when the Secretariat notifies the arbitrator that the advance on costs has been paid in full. The Standing Committee may, if necessary, extend this time-limit.

#### **Article 23 - Interim awards**

In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.

#### **Article 24 - Award by consent**

If the parties reach a settlement, the same may be recorded in the form of an arbitral award made by consent of the parties.

#### **Article 25 - Award by three arbitrators**

When three arbitrators have been appointed, the award is given by a majority decision. If there is no majority, the award may be made by the Chairman of the arbitral tribunal alone.

#### **Article 26 - Making of an award**

The award shall be deemed to be made at the seat of the arbitration and on the date of the award.

#### **Article 27 - Notification of the award**

The award is notified by the Secretariat to the parties, provided that the costs of the arbitration have been fully paid.

#### **Article 28 - Finality and enforceability of award**

By submitting the dispute to arbitration pursuant to these Rules, the parties shall be deemed to have undertaken to carry out all awards within thirty (30) days, subject to Article 29, and to have waived their right to any form of judicial recourse against the same insofar as such waiver can validly be made.

#### **Article 29 - Correction and interpretation of awards. Additional awards**

1. Within thirty (30) days of the receipt of an award, any party, with notice to the other party, may make an application to the Secretariat for:
  - a) the correction by the arbitrator of any error in computation, or any clerical or typographical error of a similar nature, contained in the award;
  - b) the interpretation by the arbitrator of a specific point or part of the award;
  - c) the issuance by the arbitrator of an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. The Secretariat shall transmit a copy of the said application to the arbitrator who shall have the authority, if such application is considered admissible and justified, to make any such correction, interpretation or any additional award.
3. The correction mentioned in paragraph 1 sub a) may also be made on the arbitrator's own initiative and shall be notified immediately to the Secretariat by the arbitrator.
4. Such correction or interpretation shall be deemed to form part of the award so corrected or interpreted.
5. Any such correction or interpretation of an award, or any such additional award shall be notified to the parties by the Secretariat.

## **COSTS**

### **Article 30 - Payment accompanying a Request for arbitration**

Each Request for arbitration under these Rules must be accompanied by the payment provided in the Schedule of costs in force on the date of commencement of the proceedings. This payment is not refundable.

### **Article 31 - Advance on costs**

1. The Standing Committee shall fix the amount of the advance on costs in a sum likely to cover the costs of the arbitration. Such costs include the arbitrator's fees and expenses and the administrative expenses.
2. Unless otherwise agreed by the parties, the advance on costs shall be payable in equal shares by the Claimant or Claimants and the Respondent or Respondents.
3. The Secretariat may make the transmission of the file or documents to the arbitrator conditional upon the payment by the parties or one of them of the whole or part of the advance on costs to the Secretariat.
4. Before proceeding with the case, the arbitrator shall inquire of the Secretariat whether the request for the advance on costs has been complied with. The arbitrator shall only proceed in respect of those claims for which the Secretariat has confirmed that the advance on costs has been paid.
5. If the advance on costs is not paid within a reasonable time-limit to be specified by the Secretariat, the Secretariat shall so inform the parties, in order that any party may make the required payment. If such payment is not made, the Secretariat shall consider the case as withdrawn, unless otherwise decided by the Standing Committee. This does not prevent the party or parties concerned from filing a new Request at a later date.
6. Where an expert is to be appointed by the arbitrator, the arbitrator shall fix an advance on costs sufficient to cover the expected fee and expenses of the expert, and shall ensure that the parties or one of them shall pay the advance before an expertise can be commenced.

### **Article 32 - Final costs**

1. The Standing Committee shall determine the costs of the arbitration, which shall include the arbitrator's fees and expenses, the administrative expenses, and the fees and expenses of any expert appointed by the arbitrator.
2. The fees of the arbitrator shall be reasonable in amount and shall be calculated taking into consideration the time spent, the rapidity of the proceedings and the complexity of the case.

3. The administrative expenses shall be fixed in accordance with the Schedule of costs in force on the date of the commencement of the proceedings.

4. The arbitrator shall decide in the award which of the parties shall bear the costs of the arbitration or in what proportions the costs shall be borne by the parties.

5. Each party shall bear its own legal costs.

**Appendix 1 - Standard Arbitration Agreement**

**Appendix 2 - Request for Arbitration Form**

**Appendix 3 - Schedule of Costs (*in preparation*).**

**Appendix I**  
(Draft/ 17 July 1996)

**INTERNATIONAL ARBITRATION  
FOR AIRLINE PASSENGER LIABILITY CLAIMS**

**STANDARD ARBITRATION AGREEMENT**

*(Note: This Agreement is to be sent, together with the Request for arbitration, to:  
The Secretariat of the Standing Committee on Passenger Liability Claims  
International Chamber of Commerce  
38, Cours Albert 1er, 75008 Paris, France)*

**I. OBLIGATORY ELEMENTS**

**CLAIMANT(S):**

1. Full name.....  
Address.....  
Country.....  
Tel..... Fax.....
2. Full name.....  
Address.....  
Country.....  
Tel..... Fax.....
3. Full name.....  
Address.....  
Country.....  
Tel..... Fax.....

**RESPONDENT(S):**

1. Full name.....  
Address.....  
Country.....  
Tel..... Fax.....
2. Full name.....  
Address.....  
Country.....  
Tel..... Fax.....
3. Full name.....  
Address.....  
Country.....  
Tel..... Fax.....

**DISPUTE AND RELIEF SOUGHT**

*(Note: Only a general outline is required here. The parties may provide more details concerning their claims at a later stage.)*

- The dispute has arisen in connection with the following:

.....

.....

.....

.....

.....

.....

- Relief sought and amount claimed:

.....

.....

.....

.....

.....

.....

We, the parties to this Agreement, hereby agree to submit the above-mentioned dispute to arbitration under the International Arbitration Rules for Passenger Liability Claims (the « Rules »). We each have a copy of the current Rules. We agree to be bound by these Rules and by the award of the arbitrator(s) appointed in accordance with said Rules.

*Signed by:*

**CLAIMANT(S):**

1. Name.....  
Date.....  
Signature.....
2. Name.....  
Date.....  
Signature.....
3. Name.....  
Date.....  
Signature.....

**RESPONDENT(S):**

1. Name.....  
Date.....  
Signature.....
2. Name.....  
Date.....  
Signature.....
3. Name.....  
Date.....  
Signature.....

## II. OPTIONAL ELEMENTS

### 1) Number of Arbitrators

The number of arbitrators shall be ..... (one or three).

### 2) Appointment of Arbitrators

(Note: - the arbitrators designated hereunder must be selected from the list of arbitrators for passenger liability claims provided by the ICC.  
- please complete either (a) or (b).)

#### a) Where the parties have agreed on one arbitrator:

The Parties jointly appoint as sole arbitrator:

Full name .....

Address .....

Country .....

Tel. .... Fax .....

#### b) Where the parties have agreed on three arbitrators:

##### i) Arbitrator appointed by the Claimant(s):

Full name .....

Address .....

Country .....

Tel. .... Fax .....

##### ii) Arbitrator appointed by the Respondent(s):

Full name .....

Address .....

Country .....

Tel. .... Fax .....

##### iii) The Chairman of the arbitral tribunal shall be:

Full name .....

Address .....

Country .....

Tel. .... Fax .....



- 3) **Seat of arbitration**  
The seat of arbitration shall be: City..... Country.....
- 4) **Language(s) of arbitration**  
The language(s) of the arbitration shall be: .....
- 5) **Applicable law**  
The law applicable to the merits of the dispute shall be: .....
- 6) **Advance on costs**  
The advance on costs shall be payable by .....

*Signed by:*

*CLAIMANT(S):*

*RESPONDENT(S):*

1. Name.....  
Date.....  
Signature.....
2. Name.....  
Date.....  
Signature.....
3. Name.....  
Date.....  
Signature.....

1. Name.....  
Date.....  
Signature.....
2. Name.....  
Date.....  
Signature.....
3. Name.....  
Date.....  
Signature.....

**Appendix II**  
**(Draft/ 17 July 1996)**

**INTERNATIONAL ARBITRATION**  
**FOR AIRLINE PASSENGER LIABILITY CLAIMS**

**REQUEST FOR ARBITRATION FORM**

(Address(es) of the Requesting party(ies) )

.....  
.....  
.....  
.....

Tel: .....

Fax: .....

Date: .....

The Secretariat of the Standing Committee  
on Passenger Liability Claims  
International Chamber of Commerce  
38, Cours Albert 1er  
75008 - Paris  
France

Request for Arbitration

Dear Sirs,

Pursuant to the International Arbitration Rules for Passenger Liability Claims, I/we hereby request arbitration of the dispute described in the attached Standard Arbitration Agreement.

Yours sincerely,

..... (Signature(s) )

..... (Name(s) of the Requesting party(ies) )

Encl: